QINGCUI DEVELOPMENT SDN BHD & ANOR

v.

SABAH ELECTRICITY SDN BHD & ANOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
ABDUL RAHMAN SEBLI JC
[SUIT NO: K22-161-2008]
28 JANUARY 2009

CIVIL PROCEDURE: *Locus standi - Action for injunction - To restrain defendants from entering land for the purpose of erecting pylons for electricity transmission lines - Whether plaintiffs had locus standi - Whether bona fide serious issue to be tried*

The first and second plaintiffs were the registered and beneficial owners respectively of two pieces of land under titles No. CL015492458 ('the CL land') and No. NT013049806 ('the NT land'). They were given approval by Dewan Bandaraya Kota Kinabalu to carry out a residential development project on the said lands. However, sometime in October 2007, the first plaintiff was informed that the first defendant intended to build high tension towers on the NT land. The transmission lines would cut across the NT Land. The plaintiffs raised their objections to this plan but to no avail. The first defendant proceeded with the project on the basis that they had obtained wayleave from the second defendant to enter the NT Land for the purpose of carrying out works for the project. However, the notice of wayleave was never effected on the plaintiffs. The plaintiffs' fear was that if the first defendant were to proceed with the erection of the high tension towers over the NT land, the whole of the housing project would not become feasible as no purchaser would want to buy a house next to high tension towers. Unless restrained by the court the first defendant would continue to enter the NT Land and commence work to erect pylons for their electricity transmission lines and construct the high tension towers on the land. Hence, this application by the plaintiffs for an injunction to restrain the first defendant from entering the NT Land for the purpose of erecting pylons for their electricity transmission lines and/or high tension towers pending the disposal of the action. In resisting the plaintiffs' application, the first defendant asserted, amongst others, that the first and second

A plaintiffs had no *locus standi* to institute the present suit and to apply for the injunction on the following grounds that (a) the first plaintiff was neither the registered owner nor the beneficial owner of the NT land; (b) there was no evidence that the second plaintiff was the beneficial owner of the NT Land as the purchase B price of the land had not been paid in full to the registered owner and vendor, one Wong Mui Eng timeously.

Held (allowing application for an injunction):

C **(1)** There was a serious question to be tried on the issue of *locus standi*. The first plaintiff was the registered owner of the CL Land whilst the second plaintiff had an arguable case that she had become the legal and beneficial owner of the NT Land. In para. 6 of the plaintiffs' affidavit in reply affirmed by one Chan Koh Poh, the plaintiffs averred that the balance of the D purchase price of the NT Land had been paid in full to Wong Mui Eng, the registered owner and vendor. It would not be proper for this court to make any final determination on the issue of *locus standi* at this stage, let alone to dismiss the plaintiff's application for want of standing. The first defendants' E submission on the issue was therefore devoid of merit. (para 5)

(2) Other than the issue of *locus standi*, the other issue which was serious enough to merit a trial in the instant case was the F issue of whether permission had been granted by the second defendant to the first defendant to enter the NT Land for the purpose of erecting the tower and transmission lines and if so whether the permission granted was in accordance with the provisions of the Sabah Land Ordinance and the Electricity G Supply Act 1990. If it were to be determined at the trial no permission was granted or that the permission was contrary to the provisions of either or both statutes then the permission would be void and of no effect. But this was not a matter to be determined on affidavit evidence alone. (para 7)

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(3) Having considered the facts as disclosed by the affidavit evidence and the submissions of both counsels, this court was constrained to hold that the plaintiffs would suffer greater injustice if relief were withheld. Further, the plaintiffs were in I a position to meet their undertaking in damages if the relief was granted. (para 8)

Case(s) referred to:

Chong Sui Jin & Ors v. Jeramas Sdn Bhd & Anor [2008] 6 CLJ 597 CA ***(refd)***

Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90 ***(refd)***

Garden Cottage Foods Ltd v. Milk Marketing Board [1984] AC 130 ***(refd)***

For the plaintiffs - Celestina Stuel Galid; M/s Jayasuria Kah & Co
For the 1st defendant - Thomas Ting; M/s Ng & Ting

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Rahman Sebli JC:

[1] The 1st and 2nd plaintiffs are the registered and beneficial owners respectively of two pieces of land under titles No. CL015492458 ("the CL Land") and No. NT013049806 ("the NT Land"). On 29 June 2007 they were given approval by Dewan Bandaraya Kota Kinabalu to carry out a residential development project on the said lands. The project comprises 71 units of terrace houses, 14 units of semi-detached houses and 13 units of detached houses. The 1st plaintiff has been offered bridging loan facilities in the sum of RM8.8 million by Public Bank Berhad for the project and is expecting a profit of RM15.5 million. However sometime in October 2007 the 1st plaintiff was informed by an officer of the 1st defendant that the 1st defendant intended to build high tension towers on the NT Land. Preliminary works on the lands commenced after the Earth Planning Approval was given by DBKK to the 1st plaintiff on 13 November 2007. The transmission lines would cut across the NT Land. The plaintiffs and their solicitors raised their objections to this plan but to no avail. They were only given assurances by the 1st defendant that their objections would be looked into.

[2] The 1st defendant proceeded with the project on the basis that they had obtained wayleave from the 2nd defendant to enter the NT Land for the purpose of carrying out works for the project. However the notice of wayleave was never effected on the plaintiffs. The plaintiffs' fear is that if the 1st defendant were to proceed with the erection of the high tension towers over the

NT Land, the whole of the housing project will not become feasible as no purchaser would want to buy a house next to high tension towers. Unless restrained by the court the 1st defendant will continue to enter the NT Land and commence work to erect pylons for their electricity transmission lines and construct the high tension towers on the land. Hence this application by the plaintiffs for the following reliefs:

1) An injunction to restrain the 1st defendant and/or its servants or agents from entering the NT Land for the purpose of erecting pylons for their electricity transmission lines and/or high tension towers pending the disposal of the action.

2) An injunction to restrain the 1st defendant and/or by its servants or agents or otherwise from continuing and/or performing any work for the purpose of erecting pylons for their electricity transmission lines and/or high tension towers on the NT Land pending the final disposal of the action.

[3] In resisting the plaintiffs' application the 1st defendant asserts, amongst others, that the 1st and 2nd plaintiffs have no *locus standi* to institute the present suit and to apply for the injunction on the following grounds:

As against the 1st plaintiff:

a) The 1st plaintiff is neither the registered owner nor the beneficial owner of the NT Land.

b) As at the date of the filing of the suit and injunction application the CL Land has not been amalgamated with the NT Land.

c) The Development Plan is subject to the conversion, subdivision and amalgamation of the CL and NT Lands.

As against the 2nd plaintiff:

a) There is no evidence that she is the beneficial owner of the NT Land as the purchase price of the land had not been paid in full to the registered owner and vendor, one Wong Mui Eng timeously.

[4] It was submitted that on the materials before the court the 1st and 2nd plaintiffs fail to establish that they qualify as persons entitled to any legal character or to any right to any property at the time the suit was filed. The question is whether the court, in dealing with the plaintiffs' application for injunction, may properly make a final determination on the issue of *locus standi* at this stage. In this connection the recent decision of the Court of Appeal in *Chong Sui Jin & Ors v. Jeramas Sdn Bhd & Anor* [2008] 6 CLJ 597 is relevant. The issue in that case is strikingly similar to the issue in the present case. In that case the High Court had dismissed the appellant's application for injunction on the ground that the appellant had no *locus standi*. In allowing the appellant's appeal, the Court of Appeal had this to say:

> In the instant case, the issue of *locus standi* was raised in the plaintiffs' application for interlocutory injunction and there was no application by the defendants to have the suits struck out on the ground that the plaintiffs have no *locus standi*. As such the function of the High Court in the instant case at that stage was to determine only whether there was a serious question on *locus standi*. The learned Judicial Commissioner did not do that but instead she made a final determination on the issue of *locus standi*. In our view the learned Judicial Commissioner had erred when she did not follow the guidelines stated by this court in *Keet Gerald Francis Noel John*'s case. It is also our view that from the submissions made by the parties on the issue of *locus standi* the High Court should have held that there was a serious issue raised on *locus standi* and the High Court should then move to the next step of its enquiry in accordance with the guidelines set out in *Keet Gerald Francis Noel John*'s case.

[5] Having regard to the facts and the submissions of both sides in the instant case clearly there is a serious question to be tried on the issue of *locus standi*. The 1st plaintiff is the registered owner of the CL Land whilst the 2nd plaintiff has an arguable case that she has become the legal and beneficial owner of the NT Land. In para 6 of the plaintiffs' affidavit in reply affirmed by Chan Koh Poh on 1 December 2008 the plaintiffs aver that the balance of the purchase price of the NT Land has been paid in full to Wong Mui Eng, the registered owner and vendor. Such being the position it will not be proper for this court to make any final determination on the issue of *locus standi* at this stage, let alone to dismiss the plaintiffs' application for want of standing. The 1st defendant's submission on the issue is therefore devoid of merit.

[6] The Court of Appeal in *Chong Sui Jin* laid down the following guidelines for a judge to follow in hearing an application for an interlocutory injunction:

(1) he must ask himself whether the totality of the facts presented before him discloses a *bona fide* serious issue to be tried. He must when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his enquiry;

(2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. He is entitled to take into account, *inter alia*, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in a financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the judge would be entitled to dispense with the usual undertaking as to damages (see *Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90). Apart from such cases, the judge is entitled to take into account the plaintiff's ability to meet his undertaking in

damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee;

(3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the *status quo*, an expression explained by Lord Diplock in *Garden Cottage Foods Ltd v. Milk Marketing Board* [1984] AC 130; [1983] 2 All ER 770; [1983] 3 WLR 143 and applied in *Cheng Hang Guan*.

[7] The guidelines cannot be any clearer. Other than the issue of *locus standi* the other issue which to my mind is serious enough to merit a trial in the instant case is the issue of whether permission had been granted by the 2nd defendant to the 1st defendant to enter the NT Land for the purpose of erecting the tower and transmission lines and if so whether the permission granted was in accordance with the provisions of the Sabah Land Ordinance and the Electricity Supply Act 1990. The plaintiffs contend that both statutes apply while the 1st defendant contends that only the Sabah Land Ordinance applies. The plaintiffs' contention is that there was failure on the part of the 1st defendant to comply with the statutory provisions of the Electricity Supply Act 1990. If it were to be determined at the trial that no permission was granted or that the permission was contrary to the provisions of either or both statutes then the permission would be void and of no effect. But this is not a matter to be determined on affidavit evidence alone.

[8] The next question to consider is whether the justice of the case lies in favour of granting the injunction or in withholding it. Having considered the facts as disclosed by the affidavit evidence and the submissions of both counsels I am constrained to hold that the plaintiffs would suffer greater injustice if relief is withheld. Further I am of the view that the plaintiffs are in a position to meet their undertaking in damages if the relief is granted. Exhibit "CKP25" of the plaintiffs' affidavit in reply affirmed by Chan Koh Poh on 31 October 2008 shows that the value of the CL Land and NT Land as at 3 September 2007 is RM4 million. That in my view is sufficient insurance for the plaintiffs' undertaking.